

## **REQUEST FOR COMMENTS**

To: All SB1299 workshop participants and other interested parties

Date: August 28, 2008

From: Torsten Clausen  
Office of Retail Market Development  
Illinois Commerce Commission

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The Office of Retail Market Development is taking a fresh look at existing requirements for providers of retail electricity services in Illinois and is looking for input from all interested parties. The list of questions presented here are not meant to be all-inclusive but Staff believes they provide a good starting point for further discussions.

For this inquiry, Staff asks the following:

1. Even if you do not have an opinion on all of the following topics, we encourage you to provide comments on the topics that are of interest to you.
2. It is intended that all comments be publicly available, probably through posting on the ICC web site. Please send your comments by September 29th, 2008. If you wish to provide reply comments, please do so by October 13th, 2008.
3. Please send your comments and reply comments to the following persons:  
Torsten Clausen (tclausen@icc.illinois.gov), Christy Pound  
(cpound@icc.illinois.gov), and Joseph Fallah (jfallah@icc.illinois.gov).

## Section 1

- I. Public Act 95-0700 authorizes the Commission “ to establish retail choice and referral programs to be administered by an electric utility or the State in which residential and small commercial customers receive incentives, including, but not limited to, discounted rate introductory offers for switching to participating electric suppliers.”
  1. Please state the benefits you anticipate from establishing retail choice and referral programs.
    - a. Retail Choice
      - i. Market-based pricing through competitive offerings
      - ii. Innovative product offerings and services
      - iii. Expanded opportunities for load response programs
    - b. Referral Programs
      - i. Additional consumer exposure, education, and understanding
  2. What are your concerns relating to the creation of such programs?
    - a. Potential that programs inadvertently diminish competitive neutrality among ARES and the incumbent utilities in retail choice and referral programs
    - b. Potential lack of customer understanding of the full benefits of competition and choice
    - c. Potential lack of customer participation
    - d. Utility offering data that is not properly communicated
    - e. Potential that important differences in the residential and small C&I customer segments are not accounted for in program details
    - f. Potential that program disclosure rules could expose sensitive, competitive data and information
  3. What are important characteristics of such programs?
    - a. Well structured, competitively neutral markets
    - b. Effective advertising, marketing, and education campaigns
    - c. ICC published program information that is easy to access and easy to understand (including glossaries, provider descriptions, clear visual aids and diagrams)
    - d. Shopping and switching procedures that are easy for the customer
    - e. Reasonable standards governing ARES disclosures that protect competitive data and information
    - f. Reasonable standards governing program and market definitions and terminology that do not stifle innovative product offerings
    - g. Clear consumer protections
  4. Would you prefer these programs to be administered by an electric utility or the State? Please describe your preferred administration of these programs as detailed as possible.

- a. The programs should be administered by the state provided that certain program components are maintained:
  - i. All programs and incentives remain competitively neutral and do not advantage any one supplier over the other
  - ii. Available programs are effectively communicated to the consumer to drive understanding of the benefits of retail choice and, ultimately, customer participation
  - iii. Supplier lists are comprehensive, inclusive, and up-to-date
    1. Remove inactive suppliers promptly
    2. Keep all contact information current
  - iv. Information is easy for the consumer to access and live people are available to answer questions
  - v. Streamlined shopping and switching procedures that prevent confusion and onerous processes that will limit participation
  - vi. Reasonable reporting requirements that do not require ARES to divulge competitive information
  - vii. Standard consumer protection measures that apply to all suppliers
5. From a procedural standpoint, what is the preferred manner in which the Commission would establish and/or approve such programs? Should these programs be part of an electric utility's tariff?
  - a. Including the retail choice and referral programs in a utility's tariff provides the benefit of providing the Commission natural and explicit oversight of the programs and compliance with their terms. However, the language should not be so restrictive or proscriptive so as to preclude modifications in the choice/referral programs as warranted.

II. The statute describes three possible retail choice and referral programs as follows:

(1) An introductory fixed discount program in which suppliers participating in the program offer customers a fixed percentage discount off of the electric utility's supply rate for a set number of billing periods. Customers would be able to enroll in the program by using an online enrollment form, completing an enrollment card found in their monthly electric utility bill, or by calling a toll-free number. Customers would be free to withdraw from the program at any time and select another alternative retail electric supplier or return to the electric utility.

(2) A new customer program in which electric utilities would offer consumers initiating new electric service a choice of offers from participating electric suppliers to provide the consumer's electric supply service. Customers expressing a preference for a specific electric supplier would be enrolled with that supplier. Customers not expressing a preference for a specific electric supplier would be offered the opportunity to enroll with an electric supplier selected randomly on a rotating basis.

(3) A customer service call center referral program in which customers calling an electric utility's call center would be offered enrollment with an alternative

retail electric supplier and informed that they have the option to receive immediate savings or introductory offers by participating in the referral program. Customers choosing to participate would be transferred to a customer service representative for the program and would either select the electric supplier from which they would like to take service or be placed with a participating electric supplier chosen at random on a rotating basis.

1. Please comment on the desirability of having any of these three programs implemented and what the role of the electric utilities, the participating suppliers, the Commission, and others, if any, should be.
  - a. These programs should only be made available to the residential customer segment.
  - b. The first program has the following benefits:
    - i. Incentives for consumers to shop retail choice through a promotional discount
    - ii. Simple enrollment processes through a variety of channels
    - iii. Consumer protections (e.g. consumer withdrawal rights)
  - c. The second program has the following benefits:
    - i. Opportune communication of available programs/savings to a relatively large number of consumers
    - ii. Reduced complexity in that the customer need only establish new service with an ARES as opposed to switching from the utility to the ARES
  - d. The third program has the following benefits:
    - i. Widespread communication of available retail choice/referral programs
    - ii. Live customer service representatives that can provide details information to the consumer
  - e. Conclusion:
    - i. All three programs could help increase customer participation
    - ii. Program (2) and (3) are predicated on state/utility personnel having extensively knowledge of and understanding of the choice/referral programs.
    - iii. Program (1) seems to be the best choice but all three would provide communication and education benefits and, most likely, additional retail choice participants
    - iv. These programs should only be extended to the residential customer segment.
2. Are there other retail choice and/or referral programs that you would like the Commission to consider? If so, please describe the characteristics of such programs in detail. For example, do you believe there should be other incentives and/or programs offered to low income consumers in Illinois? If so, should these be based on LIHEAP qualifications and what funding mechanism should be used?
  - a. The programs listed above are sufficient (Note: PA has descriptions of and links to its LIHEAP and CAP programs but does not provide additional discounts or incentives for customer switching)

- III. The law further states that “reasonable costs associated with the implementation and operation of customer choice and referral programs may be recovered in an electric utility's distribution rates, except that any costs associated with any introductory discount for switching to a supplier shall be assumed by that supplier. Reasonable costs associated with the implementation and operation of a customer choice program may also be recovered from retail electric suppliers participating in a customer choice and referral program.”
1. Please describe your preferred cost recovery mechanism in detail.

## Section 2

- I. Section 16-117 (b) of the PUA requires the Commission to “implement and maintain a consumer education program to provide residential and small commercial retail customers with information to help them understand their service options in a competitive electric services market, and their rights and responsibilities.”

While the initial implementation of the program was required to be done in the 1999-2002 time frame, Staff is interested in the possibility of re-focusing the education program. Section 16-117(j) states that “each year the General Assembly shall appropriate money to the Commission from the General Revenue Fund for the expenses of the Commission associated with this Section.”

Given that Section 16-117(k) requires the Commission to study the effectiveness of the consumer education program and complete such study “by January 31<sup>st</sup> of each year during the mandatory transition period”, Staff is interested in the parties’ assessment regarding the program’s continued statutory support.

Staff is encouraged by the fact that the General Assembly did not establish a sunset date for Section 16-117 when it originally enacted the Section as part of the Electric Service Customer Choice and Rate Relief Law of 1997 and that this Section was not modified or eliminated at any time subsequent to the end of the mandatory transition period, including the passage of Public Act 95-0481 last year.

1. Please explain whether the General Assembly should appropriate money to the Commission from the General Revenue Fund for the expenses of the Commission associated with Section 16-117.
- a. Yes

2. If you do not believe Section 16-117 is a funding source for any type of a Commission consumer education program, please describe other potential funding sources.
  - a. Non-bypassable utility charge to customer base participating in referral program (i.e. residential customers).
3. Please describe the preferred Commission involvement in any consumer education program.
  - a. Develop education program content in collaboration with utilities and ARES
  - b. Host education information and materials on Commission website
  - c. Publish and disseminate any written education materials deemed necessary
4. Aside from any potential financial responsibilities, please also describe the preferred involvement of electric utilities, alternative retail electric suppliers, and others.
  - a. Utilities and ARES should be collaborative participants in developing the education program content
  - b. Utilities should point customers to the education program materials through utility web sites and customer care/call center personnel
5. Besides printed materials and information published on public websites, what other specific mediums would you like to see used in such a campaign?
  - a. Printed materials and public websites are sufficient
6. The Office of Retail Market Development is interested in creating an online place for consumers to compare offers of electric suppliers. The type of information displayed by the "Power To Choose" websites of Texas and New York as well as other sites such as the Pennsylvania Office of Consumer Advocate seem to be a good starting point.
  - a. Please describe what type of additional information not found on those sites you would like to see for the Illinois market. – Replicating the information from those sites should be sufficient
  - b. Should the planned website display information for residential customers only? - Yes
  - c. How often should the information be updated? – Weekly (as needed)
  - d. Does the Commission have the authority to require suppliers to provide their relevant service offerings on such a website? If you believe the Commission currently does not have such authority, please explain why Section 16-117(h) of the PUA would not give the Commission the authority to do so. – If the Commission determines that it has legal authority to require suppliers to provide relevant service offerings on the proposed website, it should limit the requirement to residential service offerings only. In addition, the Commission should consider making this a voluntary program only.

- e. In the event the information displayed on such a website is out of date, should the Commission (and does the Commission have the authority to) require the supplier to provide requesting customers the opportunity to sign up for a service offering displayed on the website even if the supplier has subsequently modified or eliminated such an offering? – No. Market prices and other factors can change rapidly. If an ARES discontinues or changes a service offering it may be because the terms of the offering result in a loss to the ARES. While the ARES should make every effort to keep the service offering data up-to-date it should not be unduly punished for inadvertent lapses. Mandating that an ARES to provide a service that has been discontinued could result in the ARES being forced to leave the market, thus making the market less competitive.

II. Section 16-117(h) of the PUA states that “the Commission may also adopt a uniform disclosure form which alternative retail electric suppliers would be required to complete enabling consumers to compare prices, terms, and conditions offered by such suppliers.” Assuming you agree that Section 16-117’s legal standing has not changed following the end of the mandatory transition period, please comment on the following:

1. If the Commission were to adopt such a uniform disclosure form, what specific items should be on the form?
  - a. This information should be required for offers made to the residential customer segment only
  - b. Type of rate structure – fixed, variable, indexed, hybrid, other
  - c. Duration of product offering
  - d. Withdrawal fees/penalties
  - e. Consumer rights and protections
2. Do you agree, given that the items on the disclosure form would differ from offer to offer, that an ARES will have to complete such form for each product it offers at the time?
  - a. Only for residential offerings
  - b. Service offerings for small C&I customers very often are strategic and can provide the basis of an ARES competitive advantage. These offerings are usually customized to improve the benefit to the customer. As such, an ARES should not be required to publically disclose the terms of its small C&I offerings
3. Should this disclosure form be completed for residential offerings only?
  - a. Yes
4. In addition to the planned website mentioned above, do you believe the Commission should make this type of information available in printed form and how should the material be made available?

- a. Yes – available upon request to the ICC via phone, mail, or email
5. If so, how often should this printed material be updated?
    - a. As needed – if the printed materials are available upon request, program information could be updated in a computer system or database and print outs published when the request is received
  6. The Texas PUC recently adopted proposed changes to its requirements for information disclosures by retail electric providers.<sup>1</sup> Among other changes, it proposed to create definitions for different types of contracts and proposed to prohibit retail electric providers from using the term “fixed” when marketing products that do not meet the two approved fixed price product definitions.

If the ICC were to adopt similar requirements, do you believe the proposed definitions of the Texas PUC are a workable starting point for definitions applicable to the Illinois market? If not, what changes would be appropriate? In particular, please comment on ways to reflect the structural differences when it comes to the manner by which transmission and distribution service charges are billed and collected in Texas.

- III. Section 16-115A(e) of the PUA requires ARES to ensure that “any marketing materials which make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer.” It further states that “before any customer is switched from another supplier, the alternative retail electric supplier shall give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer.”

In addition, Section 505/2EE of the Consumer Fraud and Deceptive Business Practices Act states, among other things, that “an electric service provider shall not submit or execute a change in a subscriber's selection of a provider of electric service unless and until the provider first discloses all material terms and conditions of the offer to the subscriber [...]” and it further states that “[...]the terms, conditions, and nature of the service to be provided to the subscriber must be clearly and conspicuously disclosed, in writing, and an electric service provider must directly establish the rates for the service contracted for by the subscriber [...]”

1. Does Section 16-115A(e) and/or Section 505/2EE of the Consumer Fraud and Deceptive Business Practices Act give the Commission authority to require ARES to comply with disclosure obligations similar to Texas’ Terms of Service document, the Electricity Facts Label, and the Your Rights as a Customer document?

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<sup>1</sup> <http://tinyurl.com/595jhn>

2. If you believe the Commission has the authority to create similarly detailed disclosure requirements, please indicate how they should differ from the Texas rules.
  3. Given that Section 16-115A of the PUA does not give the Commission explicit rulemaking authority pursuant to that Section, please state where such requirements could be incorporated or created.
- IV. 83 Ill. Adm. Code §451.60 allows applicants or ARES to request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies pursuant to 83 Ill. Adm. Code 200.430 if the applicant or ARES believes any of the information to be disclosed by an applicant or ARES is privileged or confidential. Typically, an ARES uses Code Part 451.60 to request confidential treatment for its annual call center report (filed pursuant to Code Part 410.45).
1. Please explain whether you believe that the Commission should generally grant such requests for confidential treatment of annual call center reports. – Confidential treatment of sensitive data is fundamental to maintaining a viable and competitive electricity market. The Commission should have a bias toward the confidential treatment of ARES reports. Ideally, very little ARES data and information would be required to be made public. As such, the Commission should generally accept any request to keep ARES reports and data confidential.
  2. If you do not believe such requests should be granted, please indicate and explain whether you think all of the items in the call center reports should be disclosed or only a subset of those reported.
  3. Aside from the existing reporting requirements, is there any other type of periodic report that you believe would be beneficial in a competitive retail electricity market? If so, please indicate the Commission's authority to require such a report. – Current reporting requirements are sufficient.
- V. Section 16-122(b) of the PUA states that “upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided, however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer [...]”

On the issue of providing a mass customer list to assist in retail market development, the Pennsylvania PUC adopted the following rule:

(a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:

(1) The customer's telephone number.

(2) The customer's historical billing data.

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.

(c) Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.<sup>2</sup>

1. Please explain whether Section 16-122 of the PUA would allow for a similar rule to be adopted by the Commission.
2. In Docket No. 07-0241/0242 Consol., the Commission recently directed Peoples Gas and North Shore Gas to provide alternative gas suppliers access to customer information. The Commission's February 5, 2008 Order (starting at page 298) creates three different tiers of reports, with the type of information provided and the customer consent required varying across the three tiers.
  - a. Please explain whether you believe a similar structure should be implemented for the retail electricity market.
  - b. Please explain whether Section 16-122 of the PUA would allow for a similar rule to be adopted by the Commission.

VI. What provisions related to the operation of a competitive retail electricity market currently not found in the statute, in administrative code parts, utility tariffs, or other regulations would you like to see created?

For each proposed provision, please provide proposed language and the preferred mechanism to create such provisions.

For example, if you propose that all contracts for electricity service be printed on blue paper, please provide the proposed wording of such a requirement and

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<sup>2</sup> 52 Pa. Code § 54.8., Privacy of customer information. EDC stands for Electric Distribution Company and EGS stands for Electric Generation Supplier.

indicate whether such a requirement should be part of a utility's tariff (if so, which tariff section?), an existing or new administrative code part, or some other mechanism.

For each proposed requirement please state the Commission's source of authority for doing so.

In addition, if you propose that certain requirements be part of a utility's tariff, please also state whether you view that to be a permanent place for such requirements or if you propose that these tariff requirements be temporary until a permanent placement has been created.